



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 72

Relating to: Cleaning Methods for Historic Buildings

Clearinghouse Rule No.: 05-064

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 72, relating to cleaning methods for historic buildings and affecting small business.

ANALYSIS OF PROPOSED RULES

1. Statutes Interpreted

Sections 101.02 (1) and (15), and 101.1215, Stats.

2. Statutory Authority

Sections 101.02 (1) and (15), and 101.1215, Stats.

3. Related Statute or Rule

None

4. Explanation of Agency Authority

Under the statutes cited, the Department of Commerce protects public health, safety, and welfare by promulgating comprehensive construction requirements for public buildings and places of employment. In accordance with s. 101.1215, Stats., the Department is required to develop requirements for prohibiting the use of abrasive cleaners on the exterior of qualified historic buildings, including both commercial buildings and one-and two-family dwellings.

5. Summary of Proposed Rules

The proposed rules under chapter Comm 72 are being created to comply with s. 101.1215, Stats., relating to the prohibition of abrasive cleaning methods and identification of acceptable methods for cleaning the exterior facades of qualified historic buildings. The Division of Safety and Buildings will enforce the proposed rules by doing an investigation when a complaint is received by the agency. If a violation is found, the Division may refer the violation on to the appropriate authority responsible for assessing penalties as specified in s. 101.1215 (4), Stats.

The proposed rules include the following:

1. The requirements apply to both public buildings and places of employment, and one- and two-family dwellings that are qualified historic buildings. [Comm 72.02]
2. Administration and enforcement of these rules is by complaint. Penalties as specified under s. 101.1215, Stats., may be assessed for violation of these rules. [Comm 72.03 and 70.04]
3. The term “abrasive cleaning method” has the meaning given in s. 101.1215, Stats., and identifies as abrasive, cleaning procedures that employ certain materials or tools, such as sand, glass, rice husks carried in high or low-pressure air or water, or the use of high pressure water. [Comm 72.05 (1)]
4. The term “qualified historic building” has the meaning given in s. 101.121 (2) (c), Stats. [Comm 72.05 (3)]
5. Includes specific prohibition of any abrasive cleaning method on a qualified historic building. [Comm 72.06 (1)]
6. Identifies where abrasive cleaners may be used, and identifies a non-abrasive cleaning methods. [Comm 72.06 (2)]

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations

An Internet-based search for “abrasive cleaning of exterior surfaces of historic buildings” in the *Code of Federal Regulations* identified the following existing federal regulations that address abrasive cleaning of historic buildings:

1. 36 CFR 67–Historic Preservation Certifications Pursuant to Sec. 48(g) and Sec. 170(h) of the Internal Revenue Code of 1986
2. 36 CFR 68–The Secretary of the Interior Standards for the Treatment of Historic Properties.
3. 36 CFR 800–Protection of Historic Properties

Under these existing federal regulations, chemical or physical treatments may be used on historic properties for preservation, rehabilitation, or restoration; however, the treatments used must be the gentlest means possible. Treatments that cause damage to historic materials are not to be used.

An Internet-based search for “abrasive cleaning of exterior surfaces of historic buildings” of the 2003 and 2004 issues of the *Federal Register* did not identify any proposed federal regulations that address abrasive cleaning of exterior surfaces of historic buildings.

7. Comparison with Rules in Adjacent States

An Internet-based search of adjacent states identified that Illinois, Minnesota, Michigan and Iowa do not have any specific rules relating to cleaning methods for the exterior facades of historic buildings.

8. Summary of Factual Data and Analytical Methodologies

There were no factual data or analytical methodologies used to develop the proposed rules.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

10. Effect on Small Business

The proposed rules should have a minimal effect on small business.

Council Members and Representation

The proposed rules were developed with the assistance of the Historic Building Code Council, Dan Stephans, from the Department of Administration, and James Draeger, Wisconsin Historical Society. The members of the Historic Building Code Council are as follows:

<u>Name</u>	<u>Representing</u>
Bruce Johnson	Wisconsin Builders Association
Steve Gleisner	City of Milwaukee Fire Department
Charles Quagliana	AIA-Wisconsin Department of Commerce
Chris Rute	Milwaukee Historic Preservation Commission
Jim Sewell	Wisconsin Historical Society
Harry Sulzer	City of Madison
David Vos	Project Developer/Alexander Company

SECTION 1. Chapter Comm 72 is created to read:

Comm 72.01 Purpose of chapter. Pursuant to s. 101.1215, Stats., this chapter establishes rules for acceptable and prohibited cleaning methods for use on the exterior of qualified historic buildings.

Comm 72.02 Scope and application. This chapter applies to qualified historic buildings.

Comm 72.03 Administration and enforcement. Upon receipt of a complaint of a violation of this chapter, the department may do any of the following:

- (1) Investigate the alleged violation.
- (2) Issue orders to stop the use of an abrasive cleaning method.
- (3) Refer the violation to the appropriate authority for assessing penalties as specified under s. Comm 72.04.

Note: Copies of the complaint registration form SBD-192 are available at no charge from the Safety and Buildings Division, P.O. box 7162, Madison, Wisconsin 53707-7162, or telephone (608) 266-3151 and TTY (608) 264-8777, or at the Safety and Buildings web site at www.commerce.wi.gov.

Comm 72.04 Penalties. Penalties for violations shall be assessed in accordance with s. 101.1215 (4), Stats.

Note: Section 101.1215 (4)) reads: (4) (a) Any person who uses an abrasive cleaning method in violation of this section may be required to forfeit not less than \$100 nor more than \$1,000 for each offense. Each day of continued violation constitutes a separate offense.

(b) Any owner of a qualified historic building who causes or permits the use of an abrasive cleaning method in violation of this section may be required to forfeit not less than \$100 nor more than \$1,000 for each offense. Each day of continued violation constitutes a separate offense.

Comm 72.05 Definitions. In this chapter:

- (1) “Abrasive cleaning method” has the meaning given in s. 101.1215 (1) (a), Stats.

Note: Section 101.1215 (1) (a), Stats., reads: “Abrasive cleaning method” means any cleaning procedure that uses any of the following materials or tools:

1. Abrasive materials, including sand, glass beads, ground slag, volcanic ash, crushed nutshells, rice husks, ground corncobs or crushed eggshells, carried in high-pressure or low-pressure air or water.
2. High-pressure water.

- (2) “Department” means the department of commerce.

(3) “Qualified historic building” has the meaning given in s. 101.121 (2) (c).

Note: Under section 101.121 (2) (c), Stats., “qualified historic building” means a historic building which:

1. Is listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places;

2. Is included in a district which is listed on, or has been nominated by the state historical society for listing on, the national register of historic places in Wisconsin or the state register of historic places, and has been determined by the state historical society to contribute to the historic significance of the district;

2m. Is determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places;

3. Is listed on a certified local register of historic property; or

4. Is included in a district, which is listed on a certified local register of historic property, and has been determined by the city, village, town or county to contribute to the historic significance of the district.

Note: See s. 44.63, Stats., for criteria of significance for buildings to be considered for placement on the state register of historic places.

Comm 72.06 Cleaning methods. (1) ABRASIVE CLEANING METHODS. Except as specified in sub. (2), no person may use an abrasive cleaning method on the exterior of a qualified historic building. An abrasive method of cleaning includes water that is delivered with a pressure greater than 1000 pounds per square inch (psi).

(2) OTHER USES AND METHODS. (a) An abrasive cleaning method may only be used on exterior cast iron elements that are part of a qualified historic building.

(b) A cleaning method that uses a cleaning agent that is dissolvable in water shall not be considered an abrasive cleaning method provided the water is delivered with a pressure not exceeding 1000 psi.

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register*.

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